

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CORINA W.,

10 Plaintiff,

Case No. C22-972-MLP

11 v.

ORDER

12 COMMISSIONER OF SOCIAL SECURITY,

13 Defendant.

14 I. INTRODUCTION

15 Plaintiff seeks review of the denial of her application for Disability Insurance Benefits.
16 Plaintiff contends the administrative law judge (“ALJ”) erred in discounting her diabetes-related
17 allegations and in failing to address a function report completed by her mother. (Dkt. # 10 at 1.)
18 As discussed below, the Court AFFIRMS the Commissioner’s final decision and DISMISSES
19 the case with prejudice.

20 II. BACKGROUND

21 Plaintiff was born in 1994, has some college education and certifications as a nursing
22 assistant and medical assistant, and has worked as a medical assistant and pet store sales
23 associate. AR at 44, 339. Plaintiff was gainfully employed part-time as a medical assistant at the
time of the administrative hearing. *Id.* at 41.

1 In September 2019, Plaintiff applied for benefits, alleging disability as of May 1, 2017.
2 AR at 176-77. Plaintiff's application was denied initially and on reconsideration, and Plaintiff
3 requested a hearing. *Id.* at 93-100. After the ALJ conducted a hearing in June 2021 (*id.* at 33-58),
4 the ALJ issued a decision finding Plaintiff not disabled. *Id.* at 15-27.

5 As the Appeals Council denied Plaintiff's request for review, the ALJ's decision is the
6 Commissioner's final decision. AR at 1-6. Plaintiff appealed the final decision of the
7 Commissioner to this Court. (Dkt. # 4.)

8 **III. LEGAL STANDARDS**

9 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
10 security benefits when the ALJ's findings are based on legal error or not supported by substantial
11 evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). As a
12 general principle, an ALJ's error may be deemed harmless where it is "inconsequential to the
13 ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
14 (cited sources omitted). The Court looks to "the record as a whole to determine whether the error
15 alters the outcome of the case." *Id.*

16 "Substantial evidence" is more than a scintilla, less than a preponderance, and is such
17 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.
18 *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th
19 Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical
20 testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d
21 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may
22 neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v.*
23

1 *Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one
 2 rational interpretation, it is the Commissioner's conclusion that must be upheld. *Id.*

3 **IV. DISCUSSION**

4 **A. The ALJ Did Not Harmfully Err in Discounting Plaintiff's Alleged Diabetes-
 5 Related Limitations**

6 At the hearing, Plaintiff testified that her diabetes causes nausea, vomiting, headaches,
 7 and numbness in her fingers and toes. *See AR at 47.* The ALJ discounted Plaintiff's allegations
 8 of diabetes-related limitations because: (1) Plaintiff received unemployment benefits during the
 9 time that she claimed to be disabled; (2) Plaintiff's allegations were inconsistent with the
 10 objective medical evidence; and (3) Plaintiff's activities (including work activity) were
 11 inconsistent with her allegations. *Id.* at 22-23. Plaintiff contends that these reasons are not clear
 12 and convincing, as required in the Ninth Circuit. *See Burrell v. Colvin*, 775 F.3d 1133, 1136-37
 13 (9th Cir. 2014).

14 First, the ALJ found that Plaintiff's receipt of unemployment benefits during the
 15 adjudicated period undermine her allegation of disabling diabetes symptoms because the receipt
 16 of unemployment benefits requires a representation that the recipient can work. AR at 22. But
 17 Plaintiff notes that she did, in fact, attempt to work during the time that she received
 18 unemployment benefits, and claims that she was either fired or stopped working due to her
 19 diabetes symptoms, and therefore there is no inconsistency between her receipt of unemployment
 20 benefits and her allegation of disability. (Dkt. # 10 at 4-5.)

21 The record does not entirely corroborate Plaintiff's allegations, however. The record
 22 shows that some of Plaintiff's jobs ended for reasons other than her impairments.¹ Furthermore,

23 ¹ See, e.g., AR at 589 (Plaintiff quit a job in May 2017 due to the long commute and low pay), 600 (a new job offer was rescinded in November 2017 due to miscommunication with her current employer), 618

1 if (as she alleges) Plaintiff was unable to sustain a job during the adjudicated period, that would
 2 nonetheless conflict with a representation that she was ready, willing, and able to work when she
 3 received unemployment benefits. *See AR at 22.* The ALJ acknowledged that a claimant's receipt
 4 of unemployment benefits does not *per se* preclude a finding of disability (*id.*), and did not err in
 5 considering the contradiction inherent in Plaintiff's statements about her ability to work during
 6 the adjudicated period as one factor to discount her allegations. *See Carmickle v. Comm'r of Soc.
 7 Sec. Admin.*, 533 F.3d 1155, 1161-62 (9th Cir. 2008) (explaining that the receipt of
 8 unemployment benefits can undermine a plaintiff's allegation of disability).

9 Second, the ALJ found that the objective medical evidence was inconsistent with the
 10 Plaintiff's allegations. AR at 22-23. Plaintiff alleged that she experienced disabling nausea,
 11 headaches, and fatigue resulting from chronically high blood sugar levels. (Dkt. # 10 at 9.) As
 12 the ALJ found (AR at 22), however, Plaintiff's medical records also indicate that she was not
 13 fully compliant with her treatment recommendations.² Although Plaintiff attempts to assert that
 14 that even if she had been fully compliant with her treatment plan, her diabetes would still have
 15 been "problematic," she does not show that her diabetes-related limitations would not have
 16 improved if she had fully complied with treatment. (Dkt. # 10 at 11.) Substantial evidence
 17 supports the ALJ's finding that Plaintiff was not always fully compliant with her treatment

18 (July 2018 reports that she stopped working full-time as a medical assistant due to diabetes symptoms and
 19 catching infections; took a part-time job that has not resulted in absenteeism), 652 (in April 2019 Plaintiff
 20 reports that she lost a prior job due to missing work too much, but is excited to start a new job that
 21 requires working 10-hour shifts two days per week), 863 (not looking forward to returning to her job in
 July 2020 because she does not like working in a mask), 870 (lost job in 2020 because the clinic closed
 due to COVID-19 restrictions).

22 ² See, e.g., AR at 518-19 (Plaintiff not using "bolus wizard" and needs an upgraded insulin pump), 523
 23 (Plaintiff still not using bolus wizard, but received upgraded pump), 534 (Plaintiff not bolusing before
 meals), 540 (same), 548 (same), 563-64 (in October 2019 Plaintiff not using her glucose sensor; needs to
 bolus before meals), 743 (Plaintiff tells psychiatrist she does not like using a glucose sensor because she
 was embarrassed by this external device), 827-28 (on June 1, 2020, Plaintiff not using her glucose sensor;
 needs to bolus before meals), 841-42 (same, on June 23, 2020), 848 (same, in October 2020).

1 recommendations, and the ALJ did not err in relying on this reason to discount Plaintiff's
2 allegations. *See Molina*, 674 F.3d at 1113-14 (holding that an ALJ may properly rely on
3 claimant's "unexplained or inadequately explained failure to seek treatment or to follow a
4 prescribed course of treatment" when evaluating claimant's allegations (cleaned up)).

5 Moreover, the ALJ noted (AR at 22), and Plaintiff conceded (*id.* at 43-44), that although
6 Plaintiff alleged that her diabetes caused neuropathy, no testing confirmed this allegation and
7 instead her sensation testing was normal. *See, e.g., id.* at 808-811. The ALJ did not err in relying
8 on contradiction by the objective medical record to discount Plaintiff's allegation of disabling
9 numbness. *See Carmickle*, 533 F.3d at 1161 ("Contradiction with the medical record is a
10 sufficient basis for rejecting the claimant's subjective testimony.").

11 Lastly, the ALJ found that Plaintiff's daily activities undermine her allegations of an
12 inability to work, namely her ability to work at multiple jobs since the alleged onset date, and her
13 ability to care for her pets and shop online. AR at 23. The ALJ also noted that Plaintiff had
14 inconsistent and low earnings even before she alleged that she became disabled. *Id.*

15 Plaintiff asserts that the ALJ noted "minimal, at best" activities and that she never
16 claimed to be unable to care for her pets or shop online. (Dkt. # 10 at 7.) The Court agrees that
17 the ALJ erred in relying on activities that do not contradict Plaintiff's allegations or suggest the
18 existence of transferable work skills. *See Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007)
19 (activities may undermine credibility where they (1) contradict the claimant's testimony or (2)
20 "meet the threshold for transferable work skills").

21 But the ALJ's finding regarding Plaintiff's work activity during the adjudicated period
22 supports the ALJ's assessment of Plaintiff's allegations. The ALJ reasonably found that
23 Plaintiff's ability to perform some degree of work activity during the adjudicated period was

somewhat inconsistent with her allegation of an inability to work. *See Ford v. Saul*, 950 F.3d 1141, 1156 (9th Cir. 2020) (“An ALJ may consider any work activity, including part-time work, in determining whether a claimant is disabled[.]”). Although Plaintiff suggests that all of her jobs ended due to absenteeism caused by her diabetes (dkt. # 10 at 8), as noted earlier, there is evidence in the record that is inconsistent with that allegation. Even if, as Plaintiff alleges (*id.*), the ALJ erred in citing her minimal work history overall due to her young age (22) on the alleged onset date, any error in this reasoning is harmless because the ALJ reasonably discounted her allegations based on her demonstrated ability to work during the adjudicated period.

Because the ALJ provided multiple legally valid reasons to discount Plaintiff’s diabetes-related allegations, and provided additional unchallenged reasons to discount her alleged mental limitations, the Court affirms the ALJ’s assessment of Plaintiff’s testimony.

B. The ALJ Did Not Harmfully Err in Failing to Discuss Plaintiff’s Mother’s Statement

Plaintiff’s mother completed a third-party function report form in October 2019. AR at 380-89. The ALJ indicated that his decision did not specifically assess statements from non-medical sources (*id.* at 23-24), as per the applicable regulations, and Plaintiff contends that this is error. (Dkt. # 10 at 12-15.)

The new regulations indicate that statements from non-medical sources do not need to be assessed using the same criteria that applies to medical source opinions, but do not explicitly state that ALJs should not discuss statements written by non-medical sources. *See* 20 C.F.R. § 404.1520c(d).

Even if Plaintiff is correct that the ALJ erred in failing to explicitly assess the lay statement, the Court finds that the error is harmless because Plaintiff’s mother’s statement describes the same physical and mental limitations that Plaintiff herself alleged and, as explained

1 ^{supra}, the ALJ did not err in discounting them. The Commissioner’s brief stresses the similarity
2 between Plaintiff’s statements and her mother’s statements (dkt. # 11 at 7-8), and Plaintiff’s
3 reply brief does not dispute the similarity. (Dkt. # 12 at 4-5.) Under these circumstances, the
4 Court finds that any error in the ALJ’s failure to explicitly address Plaintiff’s mother’s function
5 report is harmless. *See Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685, 694 (9th Cir.
6 2009) (because “the ALJ provided clear and convincing reasons for rejecting [the claimant’s]
7 own subjective complaints, and because [the lay witness’s] testimony was similar to such
8 complaints, it follows that the ALJ also gave germane reasons for rejecting [the lay witness’s]
9 testimony”); *Johnson v. Kijakazi*, 2022 WL 3998572, at *2 (9th Cir. Sep. 1, 2022) (in a case
10 applying the 2017 regulations, finding harmless error in ALJ’s failure to address lay statements
11 where the lay statements were similar to plaintiff’s properly rejected testimony).

V. CONCLUSION

13 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this
14 case is **DISMISSED** with prejudice.

15 Dated this 12th day of December, 2022.


MICHELLE L. PETERSON
United States Magistrate Judge